IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17262 of 2006(O&M)
Date of decision 30 .4.2007

G.R. Industries Pvt. Ltd. .. Petitioner

Versus

Punjab Financial Corporation .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.AK Chopra, Sr. Advocate with
Mr. Rajneesh Chauhan, Advocate for the petitioner
Mr. HS Lalli, Advocate for the respondent

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for issuance of direction to the Punjab Financial Corporation (for brevity 'the Corporation') to hand over physical possession of the unit in question which has been illegally taken over without notice and without following due process of law. The petitioner purchased the unit in question in an open sale for an amount of Rs. 44.20 lacs. The unit which originally belonged to M/s Carewell Hygiene Products Ltd. , the borrower company of the Corporation was taken over by the Corporation under Section 29 of the State Financial Corporations Act, 1951 (for brevity 'the Act'). The petitioner was successful bidder in open auction and his offer was duly accepted by the Corporation vide its letter dated 23.8.1996 (Annexure P.1) and the petitioner had deposited 25 percent of the price accepted. On 29.11.1996, the Corporation executed a sale agreement in favour of the petitioner (Annexure P.2) which inter-alia, stipulated the date of payment of the balance sale consideration of Rs. 33.15 lacs. It was also provided that the unit in question was sold on 'as is where is basis' and it was free from all

encumbrances On inspection of the unit it transpired that the administrative block of the unit was locked and it bore the seal of Bank of Baroda. It was also found that some raw material of M/s Carewell Hygiene Product Ltd. was lying in the administrative block. However, it was discovered that Bank of Baroda had nothing to do with those goods. Accordingly, the Corporation assured the petitioner for handing over the possession. On 27.12.1996 and 21.1.1997 (Annexure P.3) the petitioner made a written request to the Corporation for handing over vacant possession of the administrative block at the earliest failing which he was not to pay interest. As per the sale agreement, the petitioner deposited with the corporation the first instalment of Rs. 2.79 lacs. However, the complete possession of the unit was not delivered to the petitioner. On 2.5.1997, the petitioner eventually purchased the raw material which did not belong to the Corporation for a sum of Rs. 5.75 lacs although it was claimed that once the unit was purchased by the corporation on 'as is where is basis" the Corporation was not legally entitled to demand any amount for the stocks lying in the unit. The amount was paid to the Corporation. On 2.5.1997, the possession of the unit was handed over to the petitioner and the petitioner kept on paying due instalment of principal amount as per agreement. On 26.5.1997 and 6.6.1997, the Corporation insisted for interest for the first two instalments .The petitioner seved a legal notice on 15.7.1997 requesting the Corporation to give up the illegally charged interest as it stood waived. However, the corporation vide letter dated 1.8.1997 insisted for payment of interest as per agreement (Annexure P.2). The petitioner eventually filed CWP No. 18959 of 1997 challenging the order dated 7.11.1997 wherein the Corporation had conveyed to the petitioner that it could get waiver of only proportionate

interest equivalent to the portion of the property which could not be handed over to it aggregating to only Rs. 30,166/-. The petition was dismissed on 16.12.1997 by relegating the petitioner to approach the civil Court by filing a suit. Accordingly, the petitioner filed Civil Suit in the Court of learned Civil Judge (Jr.Division), Chandigarh which has also been dismissed on 11.10.2005.

On 29.9.1999, the Corporation addressed a letter to the petitioner stating that it was in default of Rs. 7.04 lacs to which the petitioner replied by stating that it had paid a sum of Rs. 3,15,912/- on 31.12.1998 as interest of the first two quarters as per the agreement and there was no further liability of the petitioner. It was further asserted that the Corporation was charging interest @ 26 % p.a. and the petitioner had infact made the entire payment (Annexure P.6). It also requested the Corporation vide letter dated 18.9.2000 to look into the matter (Annexure P.7) asserting that it paid a sum of Rs. 55,12,490/- against the purchase of unit for Rs. 44.20 lacs and the amount against purchase of raw material also stood paid. It was alleged that on 1.7.2006 without issuance of any prior notice or making any form of communication, the Corporation took over the possession of the unit by invoking the provisions of Section 29 of the 1951 Act. The afore-mentioned action of the Corporation is subject matter of challenge in this petition.

The Corporation has taken the stand that the petitioner is defaulter in the repayment of instalments and it has violated the terms of the agreement and therefore the Corporation is entitled to claim interest as per agreement and recover the amount of instalments alongwith interest. The Corporation has further claimed that the Corporation in terms of the sale

agreement is entitled to resume the property and advertise the same for sale unless the petitioner pay the outstanding amount before the date of sale. It has also been disputed that the whole amount of purchase of raw material was paid and the petitioner is in default to the extent of Rs. 22,41,438/-.

A perusal of the order dated 23.11.2006 passed by this Court shows that the sale of the property in dispute was not to be confirmed, if not made. When the matter came up for consideration on 13.2.2007, we had recorded the order that pleadings on the issue of non payment in pursuance to the sale agreement dated 29.11.1996 (Annexure P.2) of the property in dispute were not clear and we had directed the Corporation through its counsel to file a detailed affidavit showing the defaults committed in making those payments by the petitioner. Accordingly, affidavit of Sh. S.C.Thatai, Dy. General Manager, Legal Cell, Punjab Financial Corporation, Chandigarh has been filed which in categorical terms conceded that nothing was due to the Corporation from the petitioner as far as the outstanding amount in respect of sale agreement dated 29.11.1996 was concerned. The alleged default was only on account of non payment of amount due for sale of raw material. The averments made in paras 2 and 3 reads as under:

> "That with regard to the Sale agreement dated 29.11.1996 i.e. the sale of the property to the petitioner, it is submitted that the nothing is due towards the PFC from the petitioner company as far as the outstanding amount with regard of sale agreement dated 29.11.1996 is concerned.
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> That the petitioner company entered into another agreement dated 31.3.1997 for the purchase of raw material for

Rs.5,75,000/-. At the time of agreement, the petitioner paid Rs.2,87,500/- and the balance was to be paid with interest @ 23% per annum from the date of agreement in two equated instalments on 1.7.1997 and 15.9.1997. However, the petitioner has failed to pay the instalments and PFC has now to recover Rs.22,53,977/- with further interest from 15.9.2006."

After hearing learned counsel for the parties, we are of the considered view that the action of the Corporation in taking over possession of the property concerning the petitioner is wholly illegal and is liable to be set aside because no action under Section 29 of the 1951 Act could be initiated against the petitioner. A perusal of Section 29 of the 1951 Act would show that it contemplates taking over the management or possession of the entire concern in case it makes default in repayment of loan or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the agreement with the corporation. It is conceded position that the petitioner is neither a borrower nor it has committed default in making repayment of such loan or instalment thereof. It has not violated the terms of any agreement with the corporation executed regarding payment of loan or instalment. We are further of the view that Section 29 of the Act does not contemplate violation of terms of any agreement with the Corporation independent of an agreement in respect of which default relating to repayment of loan or advance or interest thereon has been committed. The corporation cannot extend the scope of Section 29 of the Act by applying the same to the purchaser of a property like the petitioner. Admittedly, there is no default in payment of any amount towards the property taken over by

the Corporation. The alleged default, if any, was on account of non payment of part of price of raw material purchased by the petitioner. Therefore, the action of the respondent- corporation is wholly without jurisdiction and is liable to be set aside.

In view of the above, the writ petition succeeds and action of the Corporation to take possession of the unit of the petitioner by invoking the provisions of Section 29 of the Act is set aside. Accordingly a direction is issued to the respondent to deliver back possession of the unit to the petitioner within a period of two weeks from the date a certified copy of this order is received by it.

The writ petition is disposed of in the manner indicated above.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

30.4.2007
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